

**ADVERTISING AGREEMENT PERSHING AUDITORIUM**

**Pinnacle Bank**

This Agreement is entered into by and between SMG, a Pennsylvania general partnership acting as agent for the CITY OF LINCOLN, NEBRASKA for the management of the PERSHING MUNICIPAL AUDITORIUM (hereinafter referred to as "Pershing") and (Pinnacle Bank) a Corporation (hereinafter referred to as "Advertiser"), on this 20 day of June, 2012.

**RECITALS**

**I.**

Pershing presently owns and operates two exterior animated programmable electronic message systems and one interior animated programmable electronic message systems (the "Message Systems") at its auditorium facility located at 226 Centennial Mall South in Lincoln, Nebraska (the "Auditorium"). The two exterior Message Systems are located at 16th and M Streets and 15th and N Streets on the grounds of the Auditorium.

**II.**

Pershing is willing to grant certain advertising rights to the Advertiser and the Advertiser desires to acquire such advertising rights upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, IN CONSIDERATION OF the mutual covenants contained herein, the parties do agree as follows:

1. **Grant of Basic Advertising Rights.** Pershing hereby grants the following advertising rights to Advertiser:

a. **Interior Advertising.** Advertiser shall have the right to display advertisements on one (1) of the fixed (3' x 6') advertising panels located on the interior Message System in accordance with Exhibit B attached hereto and made a part hereof.

Additionally, Advertiser shall receive a minimum of four (4) bonus advertising messages per event to be displayed upon the interior Message System in accordance with the specifications in Exhibit B during select events at the Auditorium. Each of the Advertiser's messages thereon shall be approximately (15) seconds in duration and will be equitably timed during events at the Auditorium with those of other advertisers, if any. For non-athletic events, Advertiser's messages on the interior Message System will be displayed at appropriate times (i.e. before curtain time, intermissions, etc.) which shall be mutually agreed upon by Advertiser and Pershing.

b. Exterior Advertising. Advertiser shall have the right to display advertisements on four (4) of the fixed illuminated advertising panels measuring approximately ( 6'6" x 3') located on the two exterior Message Systems in accordance with Exhibit A attached hereto and made a part hereof.

In addition Advertiser shall receive advertising messages to be displayed in all programmable sequences on the Message Systems when the Message Systems are operational (approx. 23+ hours per day).

c. Advertiser shall bear 50% of fabrication costs of its advertising material within its assigned advertising mediums as stated in the Agreement. Pershing will provide labor for the initial installation of Advertiser's mediums and provide one (1) additional free installation for each medium per year during the term of this Agreement.

Pershing reserves the right in its sole discretion to charge Advertiser an installation fee up to One Hundred (\$100) Dollars for each additional installation. All additional costs in connection with additional charges, repairs or replacements of Advertiser's advertising displays will be at the sole cost and expense of Advertiser.

Advertiser agrees to repair, refurbish or replace said advertising displays whenever, in the opinion of Pershing, same becomes necessary. Advertiser, at its own expense, shall be entitled to change the layout copy of the advertising panels from time to time during the period of this Agreement. Advertiser shall have the right to change the advertising copy on its advertisements at its expense whenever necessary to prevent misleading advertising.

d. Pershing reserves the right to sell advertising rights on the Message Systems, the Scoreboard, and elsewhere in and around the auditorium to other advertisers that Pershing may determine are not competitors of Advertiser and who will not advertise products competitive with Advertiser's on the Message Systems.

e. Advertiser shall provide Pershing with advertising copy for the Message Systems at least seventy-two (72) hours prior to the time the material is to be displayed. Costs for any custom art work for the spot messages shall be the responsibility of the Advertiser.

f. Advertisements displayed under the terms of this Agreement shall be solely related to the Advertiser or the Advertiser's products and services and professionally presented in a manner acceptable to Pershing. Pershing reserves the right to prohibit Advertiser from displaying material that, in the sole opinion of Pershing may be offensive to those attending Pershing events or which violates the rules, regulations or statutes of the State of Nebraska regarding advertising content. All proposed advertising shall be approved by the City prior to display.

g. Advertiser shall receive one free logo placement and link on the Pershing Center Web site.

h. The Message Systems will be operated at all public events held at the Auditorium. In addition, Advertiser's panels will be fully illuminated at night events or at other times when the Message Systems are illuminated except when, Pershing deems it to be inappropriate to the event being held for Advertiser's advertising panels to be illuminated. Advertiser shall have the right of access to its advertising panels at all reasonable times for the purpose of replacement or removal of the same or to modify, change or alter the advertising appearing thereon at Advertiser's costs and at its discretion. Pershing further agrees that for the entire term hereof, there will be no alteration of Advertiser's advertising on the Message Systems without Advertiser's consent in writing.

## **2. Term of Agreement; Right of First Refusal.**

a. This Agreement will remain in effect for a term of two (2) years commencing on August 1, 2012 and terminating on July 31, 2014; or if and when Pershing ceases operations because of the construction and opening of a new facility to replace Pershing or because of a decision by the City of Lincoln to cease operations at Pershing; whichever occurs first.

b. If Advertiser is not in default under this Agreement, the Advertiser shall have the right of first refusal to renew this Advertising Agreement upon the Message Systems or comparable replacement Message Systems for a term that shall be negotiated; provided Advertiser gives Pershing written notice of its election to renew at least ninety (90) days prior to the expiration date of the original term. The amount of the fee due during the extension period as well as the payment schedule shall be negotiated in good faith between the parties. In the event the advertiser provides notice of an election to renew, but the parties fail to reach an agreement on the fee for the extension period prior to the expiration of the original term, then Advertiser's rights hereunder shall thereupon terminate.

c. No part of this agreement will transfer as an advertising agreement to a new facility in the event a new facility is constructed and opened to replace Pershing during the term of this agreement.

3. **Fees.** For the advertising rights described herein, Advertiser shall pay the City the sum of Seven Thousand Five Hundred (\$7,500.00) Dollars a year for each year that this Agreement is in effect. Payments shall be made, due and payable within thirty (30) days of each installment when billed in accordance with the following schedule:

<u>Invoice Date</u>	<u>Amount</u>	<u>Due Date</u>
9/1/2012	\$3,500.00	10/1/2012
2/1/2013	\$7,500.00	3/1/2013
2/1/2014	\$4,000.00	3/1/2014

4. **Maintenance.** Pershing shall maintain the Message Systems at its own expense, during the term of this Agreement, including the cleaning of advertising panels and changing of lamps, and agrees to repair and replace assemblies or components which fail during this period through normal use at no expense to Advertiser.

5. **Material Damage or Destruction of Display Equipment.** In the event of material damage to or destruction of the Message Systems from any cause whatsoever, Pershing shall have the option of restoring or reconstructing the Message System or it may notify the Advertiser of its intention not to make such repairs or restoration and, in that event, Advertiser shall be entitled to a pro rata refund of fees paid up to the date of the occurrence of such material damage or destruction and this Agreement shall thereupon terminate.

6. **Indemnities.** Advertiser agrees to hold harmless, defend and indemnify Pershing and its employees and agents, against all actions, claims, demands and liability for libel, slander, illegal competition or trade practice, infringement of trademarks, trade names or titles, violation of privacy and infringement of copyrights and proprietary rights resulting from any advertising display sign or any advertising by Advertiser as detailed in this Agreement.

**Force Majeure.** Neither party shall be responsible for events beyond its reasonable control, such as acts of God, weather, casualties, government restrictions or unforeseen commercial delays. Any such event occurring after the term of this Agreement begins which materially reduces the availability to Advertiser of its advertising rights hereunder for a period of longer than one month shall give rise to an equivalent extension at no additional cost to Advertiser.

8. **Independent Contractor.** It is expressly agreed and understood that the payments made by Advertiser pursuant to this Agreement are consideration for advertising and promotional rights. The parties agree and understand that Pershing or affiliates is acting as an independent contractor, unrelated to Advertiser or any of its industries. It is further agreed and understood that Advertiser is not in partnership with Pershing and it is not entering a joint venture with Pershing. Nothing in this Agreement is intended to create a relationship of employer-employee, principal - agent, or master - servant, between Advertiser and Pershing.

Advertiser and Pershing expressly warrant to each other that neither party has or will directly or indirectly, represent to any third party that Advertiser and Pershing have any business or legal relationship other than as set forth in this Agreement.

9. **Default.** Pershing reserves the right to terminate this Agreement in the event Advertiser defaults on payment or otherwise violates any other provision of this Agreement and fails to cure such default within ten (10) business days after written notice from Pershing.

Upon such termination, all payments due hereunder, but not paid and all other amounts due through the original terms of this Agreement shall, without notice or demand, become immediately due and payable. Advertiser also expressly agrees to pay reasonable attorney fees and other reasonable costs incurred in the collection of any balance due under this Agreement. Pershing shall have the right to remove all of Advertiser's advertising medium from Message System without further notice to Advertiser.

10. **Trademarks, Trade Names, and Copyrightable Materials.** Advertiser hereby grants to Pershing a limited right to use only for the purpose of this Agreement as agreed to by Advertiser, and only during the term and subject to the conditions of this Agreement, the mark of Advertiser and other marks of the Advertiser's company; Advertiser's trade name; and such use shall be under the strict control and supervision of Advertiser, and subject to Advertiser's prior approval.

11. **Notices.** All notices required hereunder shall be deemed duly given if sent by certified mail addressed as set forth below or to such other addresses as either party shall advise the other in writing:

If to Pershing:

Pershing Auditorium  
226 Centennial Mall South  
Lincoln, NE 68508  
Attention: Tom Lorenz, GM  
Telephone: 402-441-8744

If to Advertiser:

Pinnacle Bank  
1401 N Street  
Lincoln, NE 68508  
Attention: Curt Denker,  
Branch President Lincoln  
Telephone: 402-434-3115

12. **Assignments.** This Agreement shall not be assigned by advertiser nor shall Advertiser grant to any other person any of its rights hereunder without the prior written approval of Pershing.

13. **Entire Agreement.** This Agreement contains all the terms agreed upon by the parties with respect to the subject matter of this Agreement and supersedes all prior agreements, arrangements, or communications, whether oral or written, with respect hereto.

14. **Successors and Assigns.** This Agreement shall be binding and obligatory upon the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF the parties have executed this Agreement as of the day and year first written above.

ATTEST:  
a municipal corporation, dba  
PERSHING MUNICIPAL AUDITORIUM,

CITY OF LINCOLN, NEBRASKA,

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor Chris Beutler

WITNESS:

*Nancy A. Dickett*  
Secretary

Pinnacle Bank, a Nebraska Corporation

*Carolanne J. Pruett*  
Operating partner *Imple*